Report

How Long Is a Piece of String?

SMA-MPS Workshop on Informed Consent

By Gracia Ong

"How much information to give is like asking, 'How long is a piece of string?' But by reminding you of your basic principles, you will have most of your questions answered. More importantly, we want to reassure you that the goalposts have not changed. Informed consent is about the process, and not the form," noted Dr Teoh Ming Keng, Head of Medical Services (Asia), Medical Protection Society (MPS). Speaking at the SMA-MPS workshop, Informed Consent – Where Are We Heading?, at the Health Promotion Board auditorium on 28 June 2011, he was joined by Dr Jeyaraj Prema Raj, consultant hepatobiliary surgeon and Chairman, Medical Advisory Board, Mount Elizabeth Hospital, and Ms Mak Wei Munn, Partner, Litigation and Dispute Resolution, Allen & Gledhill.

Dr Chong Yeh Woei, President of the 52nd SMA Council, opened the session by raising the issues of unease felt on the ground. He advised that moving forward, doctors would have to rethink the consent taking process, and cautioned that at the same time, not go down the path of defensive medicine. Dr Chong also emphasised the need to maintain a patient-centric approach in doctoring.

Speaking on consent grouses from a doctor's perspective, Dr Jeyaraj Prema Raj opined that informed consent should be seen as a communication process that protects both the patient and the doctor. In addition, he also raised the ethical obligations of consent, pointing out that the legal aspect of consent taking was only focused upon in the recent years. Pointing out the different standards required in informed consent, he also noted the international perspectives of countries such as the UK and the US, some which tended to lean towards the professional standard, while others favoured a patient-centric approach. In his opinion, consent forms used locally were not robust enough to stand up to complicated cases, and there was a need to streamline the forms used among specialty groups to achieve greater consensus.

Ms Mak Wei Munn, in her capacity as a lawyer, provided her take on consent issues in Singapore from cases handled by the Singapore Medical Council (SMC) and also in the Courts. She noted that from her experience, patients found it easy to raise allegations against doctors on the issue of consent, as opposed to aspects of management. She reiterated that the best defence doctors could employ was to implement proper documentation. Drawing the audience's attention several landmark cases, Ms Mak also noted that a doctor's duty to act in a patient's best interest will supersede the need for informed consent.

Dr Teoh Ming Keng covered the principles and common pitfalls of informed consent from the MPS point of view. Touching on the issue, he pointed out that one should not view informed consent as a means to an end. Dr Teoh remarked that it was really about applying the lessons learnt in medical school, and maintaining focus on the patient rather than one's difficulty in obtaining informed consent. He also reinforced that the process of providing information to a patient is intended for a doctor to protect the patient, and the care, respect and trust demonstrated by the doctor will in turn protect him.

Dr Teoh also delved in depth to what entailed proper consent. He mentioned three points: that the patient needs to be competent and understand the information being provided, consent should be freely given and not under duress, and that the patient has made an informed decision. He also brought up other possible methods of enhancing the consent taking process, such as the use of audiovisual cues, putting across potentially distressing information in a sensitive manner, and allowing for discussion and questions.

Put yourself in the role of the patient, he encouraged, and preempt what you would expect to be told. In respecting a patient's need to know, this will lead one down the path of a good doctor-patient relationship. In addition, he reminded the audience to treat each patient as unique, and to address their individual concerns. Lastly, he also reassured the audience that despite the prominence of lawsuits against doctors in the media, 97% of mishaps do not result in claims, and of the 3% of cases brought up, about half would eventually be dismissed.

Dr T Thirumoorthy recapped the evening's findings, and mentioned that with information asymmetry, all doctors owe an overall duty to their patients, to inform and warn of possible risks. He then chaired the panel discussion together with Dr Teoh, Dr Jayaraj, and Ms Mak. In response to Dr Thiru's query on what the attributes of a breach of duty leading to misconduct were, Ms Mak replied that there was no one deciding factor to determine poor consent, but rather, it depended heavily on whether the patient was informed on the available alternatives and the risks present. She also reminded that it was important to cover key risks in addition to low but significant risks.

The audience peppers the panellists eagerly with questions


Dr Chong Yeh Woei


Dr Jeyaraj Prema Raj


Ms Mak Wei Munn


Dr Teoh Ming Keng


Dr T Thirumoorthy

"Informed consent was taken." Is this sentence in my case notes sufficient?

Dr Teoh answered the question on the fore of everyone's minds, and he opined that such a defense was difficult to explain. With the many different cases that a doctor sees daily, it would be better to discuss options and share one's opinion with a patient, and to document the entire process.

Dr Jeyaraj voiced his wish that the courts would advise clearly what was needed, but also conceded that doctors too should focus on the oral process, as the generic consent form was not robust enough. He felt that a risk assessment form, signed together with the informed consent form, would be preferable. Ms Mak, who also recommended that a checklist be used to ensure that no items were missed out, agreed on this.

Dr Teoh concluded that a doctor, instead of being defensive, needed to allow for a paradigm shift towards patient autonomy. He repeated that a generic consent form was not protective. In order to protect both the patient and the doctor, he opined that a standardised and robust consent form, risk assessment form and explanation, together with proper recording of contemporaneous notes during verbal discussion would be a better option.

In the event of a medically incompetent adult, who can or cannot give consent for treatment?

Dr Teoh addressed this question, and acknowledged that within an Asian context such as Singapore, issues such as a patient's family wanting a say in the consent taking process often crops up and leads to conflict. However, from a legal point of view, the doctor is the one who should make decisions in the patient's best interest.

Ms Mak agreed and also brought up the option of seeking a court order for a deputy to be appointed, but also conceded that this process would take up some time. She then mentioned the possibility of sourcing for two doctors, both acting independently, to individually assess and indicate their recommended treatment for the patient. However, if a doctor deems his own expertise sufficient, it would not be necessary for the two other doctors as a safeguard.

Dr Thiru also acknowledged that while the patient's family could sign on behalf of the patient, it was still important for a doctor to exercise judgment and show that he has acted in the best interest of the patient, and this must be properly documented.

The patient's family alleges that they were unaware of the consent being taken. Who should be held responsible for taking consent?

In restructured hospitals, a patient is often cared for by a team of doctors, headed by a consultant. A junior doctor may take consent provided he can adequately explain the pertinent information to the patient. Ultimately, it is the consultant who is responsible for the consent taking process. Where possible, he should share with the family the decisions made, although his first duty is still to the patient. Dr Jeyaraj also opined that it is important to ask the patient for permission to share information with the family, although he also noted that most patients preferred to maintain autonomy of decision.

How do I know what risks are serious enough to warrant mention, and what if these risks are rare?

The panel agreed that this was a difficult question, and that there is no single risk assessment figure that will determine whether it should be mentioned. However, the panelists concurred that if a possible complication is serious enough to significantly affect a patient, it should be awarded mention despite its rarity. Dr Thiru remarked that despite this, risk must be discussed in the light of benefit, and it is important that benefit should always outweigh risk to the patient. Where the risk benefit ratio is narrow, the doctor must provide greater disclosure using the sliding scale principle of disclosure to act in the best interests of the patient. In addition, he pointed out that clinicians are also expected to exercise clinical judgment and professional skills at all times.

The SMA-MPS workshop closed to rousing applause, and we sincerely thank all speakers and attendees for contributing to the success of the event. SMA

Invariably, when there is an allegation of mismanagement, patients will throw in the issue of informed consent for good measure. We saw from four to five years back that patients realised it was easy to bring an allegation of lack of consent. It's an issue that has been around for some time, and it is timely that doctors have caught on and hopefully do something, from a lawyer's perspective, to protect themselves.

Ms Mak Wei Munn

In MPS, we hear these all the time, whenever we take a doctor through a claim: "I do not want to scare the patient; I had a busy clinic; some complications are so rare, it's crazy to mention them; my patients will not understand even if I tell them…" There is one common thread in all this – it is all about you, the doctor, and not patient-centred. Let's get away from this; it is not the right focus.

Dr Teoh Ming Keng

The fundamental thing here is to know your patient. And the better you know your patient, the more well-positioned you are to provide the right kind of information. It is important to recognise that knowing your patients will help you build good relationships and understand their expectations.

Dr T Thirumoorthy

The audience is all ears